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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1972

No. 72-1562

LEON BURAS, JR., et al.,
Petitioners,

versus

UNITED STATES OF AMERICA
CHEVRON OIL COMPANY, ET AL.,
Respondents.

REPLY TO BRIEF OF THE UNITED STATES

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This brief is submitted in response to the belated brief of the United States in opposition to the Petition for Certiorari. The Government's brief essentially tracks Chevron's; however, the Government makes several critical misstatements which are directly relevant to the issuance of certiorari. We reply briefly.

I.

The Government asserts that this case involves no "relevant . . . question of local law involving a state regulatory system of vital interest to the State" (*Br. Op.* p. 10) and in any event that "the decision below deals with an unusual factual situation and does not place titles to large amounts of land in jeopardy" (*Br. Op.* p. 11). But the State of Louisiana, whose law concededly controls, has repeatedly

represented directly to the contrary, both here and in the court below.

II.

The Government asserts that "no ambiguous state statute is involved" (*Br. Op.* p. 10). This is not so. For example the Fifth Circuit's utter disregard of Louisiana's uniform administrative practice and construction for almost a full century under Act 75 of 1880, in fact created ambiguities in the proper construction of that Act.

III.

The Government asserts that "there is no federal constitutional question presented in the petition" (*Br. Op.* p. 10). This is not so. The Fifth Circuit's holding—that a third party could attack the validity of a State's issuance of land patents notwithstanding that property had passed into the hands of a bona fide purchaser from the patentee—is in direct conflict with the constitutional doctrine of *Fletcher* v. *Peck,* 10 U. S. (6 Cranch) 87.

IV.

The Government asserts that it is not disputed that the 1903 patents were issued "in strict compliance" with Act 75 of 1880 (*Br. Op.* p. 10). This is not so, if the Fifth Circuit's opinion is correct. The record shows, and it is undisputed, that in 1903 (i) payment was made to the Register, not the Treasurer; and (ii) the Governor signed the patents on which the Government relies without a Treasurer's receipt, both contrary to the Fifth Circuit's holding of what the statute required.

In any event, the Government's assertion is an exercise in circular reasoning. Under controlling Louisiana juris-

prudence, issuance of the 1898 patents divested the State Land Office of jurisdiction to issue the 1903 patents. Thus the claim that the 1903 patents were issued in strict compliance with Louisiana law necessarily assumes that the 1898 patents were invalid—the very question at issue in the litigation.

V.

The Government, like Chevron, seeks to create the impression that the failure to have "duly entered [the 1898 patents] in the State Land Office" (*Br. Op.* p. 4) is a fault somehow attributable to the Burases' predecessor, Barrois. This is not so. In fact, Barrois had neither the obligation nor, indeed, the opportunity to make an entry in the State Land Office or to pay the Treasurer. The Louisiana statute and practice imposed these ministerial functions upon the Register, who, in entering the 1903 patents, carefully noted in the official records of the State Land Office the issuance of 1898 patents on the same land. Barrois did have an opportunity to make a local recordation of the 1898 patents, which he promptly did. In short, Barrois did *all* he could to comply with the State law, and all that the State required (*Pet. App.* pp. 114a-16a). Under these circumstances, the 1898 patents must be recognized as valid. *La Terre* v. *Billiotts Shell Island,* 103 F. 2d 53 (5th Cir. 1939).

CONCLUSION

For all the reasons advanced, petitioners respectfully pray that the Petition for Certiorari be granted.

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Respectfully submitted,

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